IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO.126 OF 1990

The State of Maharashtra] Appeallant

versus

1. Vasantrao @ Raosaheb Dattaji]
   Nimbalkar, age 46 years]
2. Goroba Namdeo Kadam,]
   age 23 yrs.]
3. Nana Ram Gunjal,]
   aged 24 yrs.]
4. Hanmantrao Maganrao]
   Nimbalkar, age 52 years.]
5. Babulal Allabux Shaikh,]
   Age 40 years.]
6. Chandrakant Dattajirao]
   Nimbalkar, age 55 years.]
7. Raosaheb Mallikarjun Patil,]
   aged 40,]
8. Pratap Shivajirao Nimbalkar,]
   aged 32,]
9. Rajesh Hanmantrao Nimbalkar,]
   aged 21,]
10. Sanjay Hanmantrao Nimbalkar,]
    aged 20,]

11.Mohan Ramling Ghodake,]
aged 38,]
12.Vithalrao Dattaji Nimbalkar]
age 51 years.]
13.Rajesh Kisan Kesare,]
aged 29,]
14.Machindra Mahadeo Salve,]
age 20 years.]
15.Baliram Damu Poul,]
age 20 years.]
16.Namdeo Narhari Poul,]
aged 30,]
17.Kalyan vithoba Khendad,]
age 23 years.]
18.Satish Amrushi Khendad,]
age 20 years.]
19.Anil Digambar Gunjal,]
age 20 years]
20.Vilas Dattu Shinde,]
age 18 years.]
21.Kundalik Rama Gunjal]
age 30 years.]
22.Tanaji Ambadas Kajale]
age 25 years.]
23.Nagnath Shivaji Palkar,]

age 28 years.]

24.Dada Ananta Shinde,]
age 20 years.]
25.Devidas Bhagwan Poul,]
age 18 years.]
26.Prakash Rohidas Kamble,]
age 26 years.]
27.Sudhir Narhari Upalkar,]
aged 24, years.]
28.Santosh Chandrakant]
Nimbalkar, age 18 years.]
29.Suresh Nagnath Deshmukh]
age 21 years.]
30.Babu Vaijinath Kapase,]
age 27 years.]
31.Kishor @ Kisan Maruti]
Waghmare, age 28 years.]
32.Kaka Gorakh Gholap,]
age 22 years.]
33.Nagnath Rajaram Shingare,]
age 21 years.]
34.Nana Namdeo Survase,]
age 30 years.]
35.Shashikant Kisan Mohite]
age 20 years.]

36.Suresh Sitaram Kamble]
age 23 years.]

37.Shukur Rajak Choudhary,]
age 24 years.]
] Respondents.
All residents of Vairag,] (original
Tal.Barshi, Dist.Solapur] accused)

Mr.V.B.Konde-Deshmukh, APP, for the State.
Mr.S.V.Kotwal, Adv.appointed for accused.

CORAM : D.G.DESHPANDE
S.R.SATHE, JJ.
DATED : FEBRUAR 12, 2007.

JUDGMENT : [PER D.G.DESHPANDE,J]

1. This is an appeal filed by the State against the order and judgment of acquittal of the accused of the offences under Sections 147, 148, 436 r.w.149 and 427 r.w 149 of the Indian Penal Code passed by the Assistant Sessions Judge, Solapur on 5th December 1989. There are in all 37 accused. All residents of village Vairag, Taluka Barshi, Dist.Solapur.

2. The charges against all the accused are in respect of riotous behaviour. The charge framed by the trial Court against all the accused is under Sections 147, 148, 436 read with sections 149, 427 r/w 149 of the Indian Penal Code.

3. We heard learned APP Mr.Konde-Deshmukh for the State and Mr.Kotwal, the learned advocate appointed by us to represent the accused.

4. The brief facts of the prosecution case is under :-

. The complainant in this case is Balu Gajendra Dekhale. The date of incident is 16th February 1989. The complainant was the resident of village Vairag and carrying on tea canteen in a wooden box locally known as ’Tapari’ in Azad Chowk at village Vairag. On 16th February 1989 at about 8.00 to 8.30 p.m. he closed his tea canteen and started proceeding towards his house. At that time a mob of 70 to 80 persons including the accused in this case, came from his opposite side. It is alleged that the accused Pratap

Nimbalkar, Sanjay Nimbalkar and Raja Kesare caught him at his collar and told him that they would burn his tea canteen. They also abused him and threatened him. The other persons in the mob were also saying to beat the complainant. The complainant was frightened and, therefore, went his home. It is also alleged that the persons in the mob pulled down his tea canteen and broke the same by pelting stones and giving axe blows. The material therein was damaged and the damage was to the extent of Rs.2,000/-. The pan shop of one Ramling Gorakh Pandharmise was also burnt. Accordingly, he lodged his complaint with the police. The offence came to be registered. The matter was investigated by PSI Vasant Punekar. During the course of investigation, he recorded the statements of the witnesses, prepared panchanama and arrested the accused. In the mean while, PSI Punekar was transferred and further investigation was carried out by PSI Tele. Then a charge sheet was filed against all the accused.

5. The prosecution has examined in all 7 witnesses to prove its case. P.W.1 is Bajarang Ganpat Pandharmise-the panch witness. P.W.2 is Balu Gajendra Dhekale-the complainant. P.W.3 is

Ramling Gorakh Pandharmise-the eye witness. P.W.4 is Galib Shaikh-the another eye witness. P.W.5 is Laxman Zampale, Police Head Constable, who registered the offence. P.W.6 is Latif Shaikh-the eye witness. P.W.7 is Vasant Punekar-the IO, who investigated the offence.

6. P.W.1 the panch witness has stated that on 17-2-1989 he was called by police in Azad Chowk in Bagale galli. The complainant was present there. The complainant showed shop of Ramling Gorakha Pandharmise (PW.3). It was a tapary and all the material was lying disorderly here and there. Its door had broken. The damage of about Rs.10,000/- had caused. Then the complainant showed his own shop which was at a distance of 10-15 ft. from the tapary of P.W.3 Ramling. It was also a tapary made for tea canteen. It had also broken and goods therein had scattered. The damage caused to the canteen of complainant was about Rs.2000/-. This panch witness (PW.1) further stated that then the complainant also showed a shop belonged to one Thorat. The same was broken and its material was lying disorderly. The damage of Rs.3,000/- was caused. Then the complaint showed another tapary

i.e. tea house. It was burnt. The material therein had also halfly burnt. It belonged to one Mohan Jadhav. The damage to the extent of Rs.4,000/- to Rs.5,000/- was caused to this tea house. This panch witness has stated that all these taparies were in the Azad Chowk. He proved his panchanama at Exhibit 43.

. In his cross he admitted that there were two political groups one leaded by Dhanyakumar Bhumkar and another leaded by Chandrakant Nimbalkar. He also admitted that the complainant is his relative and Ramling Pandharmise (PW 3) is his cousin brother. This witness also admitted that he was serving in a foodgrain shop which was under the control of party belonging to Bhumkar. This witness did not give complaint in respect of burning of his tapary. He has stated that from the spot nothing was attached by the police

7. P.W.2 the complainant Balu has stated that the incident took place on 16-2-1989 at about 8.00 p.m. to 8.30 p.m. At that time after closing his shop, he was proceeding towards his house. About 70-80 persons came from his opposite side. He has further stated that at

that time Pratap Nimbalkar, Raja Nimbalkar, Sanjay Nimbalkar, Satish Khendad, Raja Keshare caught his collar and told that they would burn his tapary. They also abused him. He also stated that Pratap Nimbalkar, Mohan Ghodake etc. then broke the tapary of Ramling Gorakh Pandharmise by giving blows of axe and pushed it down. Then the accused went to the doors of Jai Bhavani Tapary and thrown the materials therein. Then Pratap Tea House was burnt to ashes. Thereafter the accused ran away outside by a main road. The complainant has stated that the damage of Rs.2000/- was caused to his tapary. He was sitting there. Then police came and recorded his complainant. He also stated that the persons of whose the taparies were burnt belonged to Bhumkar party.

. In his cross examination he has stated that Tukaram Dekhale was his uncle and he was the member of Grampanchayat elected through Bhumkar Party. He has admitted that he had no licence of his tapary and the place on which his tapary was situated does not belong to him. Through his cross examination the defence has brought on record many improvements made by the complainant.

8. So far as eye witness is concerned, P.W.3 Ramling Gorakh Pandharmise has stated that he had a pan shop in a tapary at Vairag in Azad Chowk. He has stated that at the time of incident he was sitting in his shop. People came shouting from Bagale Lane. They were 25-30 in number. He has stated that he was afraid and came out of his shop. He was pulled and pushed. The accused were armed with sticks, axes, Mashal and tins containing kerosine. Therefore, he ran away and stopped at a distance by taking shelter. He saw that his pan shop tapary was pushed down and articles therein were scattered. This witness has further stated that his tape-recorder and cash amount had also gone. Then he stated that gauge with kerosine was thrown on his shop, it was lit with match box and his shop was set on fire. He further stated that the accused went away down side and there are Jai Bhavani shop and Pratap tea house near his shop. He further stated that Pratap tea house was completely burnt and he door of Jay Bhavani shop was damaged. Thereafter police came and recorded his statement. He has stated that the accused belonged to Nimbalkar party and the shop owners

whose shops were burnt and damaged were belonged to Bhumkar party and his shop was damaged as he belonged to Bhumkar party. He sustained damaged of Rs.8,000/- to Rs.10,000/-. He also stated that Balu Dhekale has his tea canteen and stones were pelted on his shop, sticks blows were also given and it was pushed down.

. In his cross examination this witness has admitted that Balu Dhekale, the complainant, is his relative and the tapary of complainant was not visible from his tapary. There are improvements in his story. The defence has brought on record so many contradictions and omissions through his cross examination. He has stated that he did not know whether on the same day and time there was fire on account of kerosine barrels.

9. The next witness is P.W.4 Galib Shaikh, who is the eye witness. This witness is hostile. All the suggestions given to him by the APP were denied by this witness. Nothing was brought on record through the cross examination of this witness. A suggestion was put to him that the accused were belonged to Nimbalkar Party. But he

denied that suggestion. He also denied the suggestion that he belonged to Nimbalkar party and, therefore, he is deposing falsely to save the accused.

10. So far as P.W.5 is concerned, he is Police Head Constable who registered the offences. His evidence is very short. He has stated that he received the complaint and he registered the offence. He took entry in the station diary as per the phone call.

. In his cross examination he admitted that on the same day night they have received a phone from Dhanyakumar Bhumkar that the barrel containing kerosine were on fire. He admitted that in all five complaints came to him for registering the offence.

11. The another eye witness examined by the prosecution is P.W.6 Latif Tayab Shaikh. He has stated that at the time of incident he was standing chewing pan in front of the shop of one Naga Amale in Azad Chowk. He heard hue and cry from the side of Bagale lane. The persons belonged to Nimbalkar Party came from the side of

Bagale lane. He has further stated that those persons after pelting stones and after inflicting axe blows on the shop of complainant, pushed the same. Then there was throwing of materials from the said shop here and there. Then those persons went away. They also burnt the Pratap canteen. They also pulled down the shop of pan of Rama Pandharmise. Then they went towards Gandhi Chowk. Thereafter this witness went home.

. In his cross examination he has admitted that his father Tayab was the member of Grampanchayat, Vairag and he was elected through the panel of Sarpanch Annasaheb Bhumkar. He has admitted that since the incident, till his statement was recorded by police, he did not disclose this incident to anybody. The material omissions and contradictions were brought on record by the defence through his cross examination.

12. P.W.7 Vasant Punekar is the investigating officer. At the time of incident he was on Bandobost duty at village Pangari. He received message informing about riot at Vairag. Thereafter he returned to Village and inspected

the situation. The work of extinguishing the fire was going on. He recorded the complaint of Balu Dhekale as per his version and sent the same to the police station for registering the offence. Then he drew the panchanama of scene of offence, recorded the statements of witnesses. He arrested the accused. Thereafter he has been transferred. PSI Tele then carried out further investigation and sent the charge sheet.

. In his cross examination he has admitted that the complainant did not tell the names of accused Balasaheb Patil, Jinnus Khendad and Anil Khendad when his complaint was recorded. There are improvements and contradictions in his evidence. He has stated, in his cross examination, that the work of extinguishing the fire was going on at the shop of Bhumkar and Sopal, in Vani Lane. He admitted that on that day he recorded in all five complaints one after another and sent them to the police station for registration. On the next day he had taken the photographs of the fire to the shop of Bhumkar but he had not taken photographs of the burnt taparis in Azad Chowk. He has admitted that in the cases of fire (arson) some remains of burn

used to be attached as Muddemal. A suggestion no incident of arson had taken place and, therefore, he did not attach any such material, was denied by him.

13. After scanning and scrutinising the evidence on record, it is clear that this incident had occurred out of a group rivalry between the complainant side and the accused. There are number of contradictions, omissions anomalies, lacunae, defects in the evidence of the prosecution. The complainant has improved his story materially. There are contradictions in his version.

14. The learned advocate for the accused contended that the incident is of 1989. The judgment of the trial court is of 1989. Period of more than 18 years have lapsed. There are three more appeals pending before this court coming out of the similar incidents of 1989. In all 77 accused were there. (Some of them are common in all these incidents). They have been acquitted by the trial Court and, therefore, unless the prosecution was successful in showing that the judgment of the trial court is perverse,

this court should not interfere. He has also argued that if two views are possible on the given set of facts and, if the trial Court has taken a view which could be said to be reasonable in the circumstances, then the appellate Court should be loath in interfering with the order of acquittal. According to him, there was nothing in the judgment of the trial Court from which it could be inferred or conclude that the judgment of the trial court is perverse.

15. The defence lawyer drew our attention to the facts of the case in support of his contention and also pointed out that when the trial court framed points for determination, it gave findings in negative not only in respect of one point but in respect of all points. We are reproducing the points framed by the trial court for determination along with the findings.

> 1. Whether the prosecution has proved that on 16-2-1989 at 8.30 p.m. at Vairag, in Azad Chowk, the accused Nos.1 to 37 along with deceased Nagnath Shivram Khendad formed an unlawful assembly the common object of which was to commit the

offence of rioting armed with deadly weapons and to commit mischief and damage?

2. Whether the prosecution has proved that on the same day, date, time and place accused Nos. 1 to 37 along with deceased Nagnath Shivram Khendad formed an unlawful assembly and in prosecution of its common object committed riot armed with deadly weapons like stones, sticks and burning Tembhe etc. ?

3. Whether the prosecution has proved that on the same day, date, time and place accused Nos. 1 to 37 along with deceased Nagnath Shivram Khendad being members of an unlawful assembly and in prosecution of its common object committed mischief by setting fire to the tea canteen (tapari) of the complainant, tea canteen and 2 pan shops of the witnesses by setting fire thereto?

4. Whether the prosecution has proved that on the same day, date, time and

place accused Nos. 1 to 37 along with deceased Nagnath Shivram Khendad being members of an unlawful assembly and in prosecution of its common object committed mischief by causing loss and damage to the extent of Rs.2,000 to the tea canteen of the complainant and to other canteen and 2 pan shops of the witnesses by destructing material therein?

5. Whether the prosecution has further proved that on the same day, date, time and place accused Nos. 1 to 37 or any of them committed any of the offence as alleged?

6. What order ?

Findings :-

1. No.
2. No.
3. No.
4. No.
5. No.

6. As per order below.

The learned advocate for the accused, therefore, contended that when not a single findings was given by the trial Court in favour of the prosecution, then this court should not interfere with the order of acquittal. In support of his contentions, the learned advocate for the accused drew our attention to para 17 of the trial Court's judgment wherein the trial Court observed that from the above discussion as regards the evidence of the complainant and other eye witnesses it is clear that they belonged to the rival group of Bhumkar and as such they are interested in the prosecution. The trial court also found that their evidence is inconsistent with each other and it suffers from material contradictions and improvements and therefore it is unsafe to believe in such unreliable evidence as regards the actual incident to infer that the accused have committed the offence as alleged against them. The panch witness (PW 1) examined by the prosecution is the relative of the complainant Balu Dhekale and eye witness Ramling Pandharmise (PW 3). He belonged to rival group of Bhumkar and, therefore, the trial Court has

rightly held that he is interested witness and, discarded his evidence in toto. So far as damages caused to the complainant is concerned, nothing has been attached by the police from the spot. Therefore mere statements of the witness that such and such damages were caused would not be sufficient for the prosecution to prove the actual damages. From the evidence of P.W.5 it is clear that the complaints in this case and in other matters, were sent to him at one and same time. Therefore, the trial Court has rightly held that all the five complains got recorded on the same day night one after another and accordingly the offences were registered.

16. It is clear from the evidence on record that there were two groups. Bhumkar group and Nimbalkar group. The complainant and witnesses belonged to Bhumkar group and the accused belonged to Nimbalkar group. It has also come on record that the panch witness, eye witness (PW.3) and the complainant were related to each other. All the witnesses in this case examined by the prosecution are belonging to Bhumkar group, and therefore, they are interested witnesses. Therefore, it has to be held that the incident is

the outcome of group rivalry. Therefore, the trial court has rightly come to the conclusion that there is a long standing enmity between the two political groups at village Vairag and the present incident emerged out of the said political rivalry. If 70-80 persons were present in the mob and the witnesses were silent about the acts of other persons, then only the accused could not be held guilty. There is no perversity in the view adopted by the trial Court. The judgment of the trial court is proper and well reasoned. It does not require any interference.

17. For all these reasons We pass the following order :-

:ORDER:

The appeal of the State is dismissed.

The accused are on bail. Their bail bonds stand cancelled.

[D.G.DESHPANDE,J]

[S.R.SATHE, J]